

8.69.00.00 RAILROADS

8.69.01.00 Railroad Function

The clearance of construction projects that involve railroads consists of two separate but closely connected functions:

- Acquisition of railroad property rights.
- Agreement with the railroad for physical construction of the project.

This section covers the acquisition of property performed in the districts with HQ R/W guidance.

The Office of Structure Design, Agreements Branch, handles agreements for construction and maintenance, service contracts, and “Relations with Railroads” clauses. These subjects are covered in the Railroad Syllabus.

Railroad clearance is a joint effort; the project can be advertised only when both functions are complete. A R/W certification will not clear the project without the clearance letter from Agreements. Likewise, completion of the Construction and Maintenance Agreement or Service Contract will not clear a project until the property rights are under the department’s control by Right of Entry, R/W Contract, etc.

If project deadlines are to be met, district railroad personnel MUST:

- Know the contents of this Chapter.
- Know the contents of the Railroad Syllabus.
- Fully inform their counterparts in the Agreements Branch and HQ R/W of all correspondence and telephone contacts as problems arise.

8.69.02.00 Federal-Aid Requirements

Federal-aid requirements for railroad transactions are contained in CFR sections listed below. These must be fully complied with to ensure federal participation where applicable. When questions arise, HQ R/W is to be consulted and prior FHWA concurrence obtained.

23 CFR 646.216 General Procedures

.216 (c) Rights of way

.216 (c) (1) Acquisition of Right of Way

.216 (c) (2) Functional Restoration or Replacement of Structures

.216 (c) (3) Replacement of Right of Way

.216 (e) (1), (2), (3) Authorizations

8.69.03.00 District Responsibility

The DDC-R/W shall designate a R/W employee who shall have full responsibility for railroad negotiations leading to clearance of projects for advertising. The designee, referred to as the District Railroad Agent, shall be responsible for performance of the duties as described below.

8.69.03.01 Determination of Railroad Involvement

The Railroad Agent shall make a positive determination on whether or not there is railroad involvement on a project as early as possible, but no later than the Project Report stage.

The Railroad Agent shall provide the information requested on the R/W Data Sheet attachment to Project Reports. This information includes:

- A determination of whether railroad facilities or rights of way are affected, and if so, the type of railroad involvement.
- When a railroad branch line or spur is affected, a determination if there may be a more cost-effective solution to the project than constructing a facility to preserve the rail service.

Items to be considered and documented on the R/W Data Sheet include:

- Number of train movements per day or week and the number of businesses and industries involved for all spur tracks and branch lines that terminate within the immediate vicinity of the project.
- Rough cost estimates to buy out businesses and industries, including an estimate of relocation

costs. This information is obtained from the R/W Estimating Section.

- Payment of damages if alternate forms of service are feasible, such as truck or teamtrack.
- Estimated cost to construct facilities to perpetuate existing branch line or spur. This information is obtained from Project Development.
- Number of oversized and overweight loads incapable of being hauled over highways.

8.69.03.02 **Negotiations and Document Preparation**

- The District Railroad Agent shall also:
- Negotiate acquisition of operating railroad parcels.
- Prepare R/W Contracts.
- Request any necessary contracts or Agreements.
- Initiate condemnation procedures (see Section 9.02.04.00).
- Prepare MOS (Form RW 8-30).
- Clear all interests affecting railroad parcels as required.
- Request and process Rights of Entry. Briefly inform railroad of the need and use of any property requirements.
- Prepare rebuttals in response to FHWA citations on railroad parcels.
- Coordinate with Project Development to prepare Exhibits A, B, and C for the PUC application for grade crossings and separations. (See Form RW 8-32 and Railroad Syllabus.)
- Maintain status records for all railroad projects.
- Act as coordinator of the Railroad Advisory Team (see Section 8.69.11.00).
- Certify that required railroad property has been acquired, covered by Right of Entry or Order of Possession.

8.69.03.03 **Document Review**

The District Railroad Agent shall also:

- Review and provide for district review of Construction and Maintenance Agreements and Service Contracts to ensure:
 - Conformity with what the district and railroad have agreed upon.
 - Payment or credit is not duplicated in a R/W Contract, Service Contract, or Construction and Maintenance Agreement.
- Review and recommend for approval Nonstandard Railroad Indentures, Deeds, and Rights of Entry.
- Review and obtain district approval, if necessary, of "Relations with Railroad" clauses and advise Agreements Branch of district approval.
- Provide the Agreements Branch with written confirmation of compliance with these document review requirements.

8.69.03.04 **Coordination Activities**

On state projects the District Railroad Agent shall be the sole coordinator and shall handle all district contacts with railroad companies.

- Furnish railroad maps and plans during project development phase and request estimate of cost of work to be performed by railroad.
- Furnish railroad maps and legal descriptions of proposed right of way acquisitions affecting railroad property during R/W phase.
- Maintain file of all project-related correspondence and route copies to interested parties, including railroad, as necessary.
- Arrange and attend office and field reviews between district and railroad personnel.
- Provide services, information, and aid to all district branches, Agreements Branch, and Office of Project Development.

- Act as liaison agent for district with PUC, railroads, Office of Project Development, and Agreements Branch.
- Advise supervisor of project status and any potential delays.
- Advise district Office of Project Development and Agreements Branch of potential railroad problems.
- Inspect or arrange for inspection of grade crossings upon completion of construction and determine date crossing was completed and opened to the public. Transmit this information in a final report to the Agreements Branch together with photographs of the crossing.
- Furnish information to Agreements Branch about projects for the recommended grade crossing list.
- • Regions/Districts have the authority to make application for a new or renewal of a railroad franchise or for rearrangement or construction of rail facilities where an existing or contemplated state highway or freeway is affected, or likely to be affected, by the continued maintenance, rearrangement, or construction of the rail facility. Regions/Districts will handle the matter on the local level with the appropriate local authority.

The District Railroad Agent's involvement in local assistance projects will be in accordance with district procedure.

Refer to the Railroad Syllabus for engineering guidelines required for railroad negotiations.

8.69.04.00 Responsibility of Office of Special Projects, Agreements Branch

The role of the Agreements Branch is to clear all projects with railroad involvement for advertising. Project clearance may involve some or all of the following activities.

- Assist District Railroad Agents and HQ R/W in communication and coordination with railroads regarding engineering matters.
- Prepare and negotiate Construction and Maintenance Agreements and supplements thereto.

- Prepare Service Contracts and supplements thereto for upgrading and modifying existing railroad protection devices.
- Prepare Service Contracts and supplements thereto for miscellaneous railroad work.
- Prepare "Relations with Railroad" clauses.
- Determine apportionment of costs.
- Determine state's liability for extraordinary maintenance.
- Obtain PUC maps required for grade separation structures.
- Prepare exhibits for Legal's PUC application.
- Determine requirements for track construction.
- Extend expiration dates as authorized by PUC decisions as necessary.
- Obtain Legal and HQ R/W review of Construction and Maintenance Agreements, Service Contracts, and other related documents.
- Review documents and agreements for conformance with FHWA rules and regulations and obtain FHWA approvals as required.
- Serve as a member of the Railroad Advisory Team on projects with complex railroad involvement.
- Process all railroad bills for payment.
- Review applications from local agencies for allocations from Grade Separation Fund.
- Appear at PUC hearings as advisor or expert witness in cooperation with Legal.
- Provide liaison between district and Headquarters units, including Legal.
- Send copies of the Contract Special Provisions to the involved railroad as soon as such copies are available in final form.

- Prepare and update the Railroad Syllabus covering matters required for railroad negotiations and project clearance.

8.69.05.00 **Responsibility of HQ R/W Acquisition Branch**

HQ R/W assists the districts and various Headquarters offices in railroad matters and performs the following additional duties.

- Develop standard procedures for property acquisitions from and negotiations with the various railroad companies.
- Provide liaison between the various railroad companies and state and federal agencies on specific issues affecting the railroads.
- Obtain Legal Program review of R/W Agreements and other matters as required.
- Negotiate standard indentures with railroad companies.
- Negotiate directly with railroad companies on specific issues of statewide significance.
- Assist the districts in preparing complex R/W Contracts and Agreements when requested.
- Review (for conformity with established procedures) and approve all nonstandard railroad property acquisition transactions.
- Post-audit district approved standard railroad property acquisition transactions.
- Provide post audit review to ensure conformity of Construction and Maintenance Agreements and supplements with R/W Appraisal and Contract obligations.
- Serve as a member of the Railroad Advisory Team.
- Provide liaison between the districts and various Headquarters offices.

8.69.06.00 **Role of the Public Utilities Commission (PUC)**

Railroads are common carriers that fall under the jurisdiction of the PUC. The powers and jurisdiction

of the PUC are contained in the Public Utilities Code, which was adopted in 1951 (STATS 1951, Chapter 764 as amended) pursuant to the Constitutional authority found in Sections 22 and 23, Article 12 of the California Constitution. Section 23 provides in part:

"The Railroad (now Public Utilities) Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California... as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

8.69.07.00 **Powers of the PUC**

Public Utilities Code Sections 1201 through 1220 are the laws that generally have the greatest effect upon the Department's program. Section 1201 provides:

"No public road, highway or street shall be constructed across the tracks of any railroad corporation at grade...without having first secured the permission of the Commission."

Section 1202 provides that the PUC has the exclusive right:

"...to determine and prescribe, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing...of a publicly used road or highway by a railroad or vice versa."

"...alter, relocate or abolish by physical closing any such crossing heretofore or hereafter established."

"...require...a separation of grades at any such crossing...and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation or abolition of such crossings or the separation of such grades shall be divided between the railroad...and the State...."

8.69.08.00 **Role of the Interstate Commerce Commission (ICC)**

Article I, Section 8, Clause 3, of the U. S. Constitution empowers Congress to regulate commerce among the several states. Under this power, Congress regulates interstate commerce on rails, highways, inland waterways, and in the air.

Title 49, Chapter 29, Section 1(2) provides in part:

"(2) The Provisions of this chapter shall also apply to such transportation of passengers and property and transmission of intelligence, but only insofar as such transportation or transmission takes place within the United States, but shall not apply:

- (a) To the transportation of passengers or property, or to the receiving, delivery, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid, except as otherwise provided in this chapter...."*

8.69.09.00 **Powers of the ICC**

Section 1 (18) of the Interstate Commerce Act provides that a railroad must have ICC approval to abandon main line trackage or trunk lines that fall under the ICC's jurisdiction. When a railroad files an application for abandonment, the ICC contacts all shippers who use the line. If the application is not protested, it usually is set for hearing and approved without any undue delay. Issuance of an order takes about nine months from the date the application is filed.

If an application is protested, the proceeding is set for a public hearing at which all interested parties may appear and present their cases. Following the hearing, the hearing report examiner issues a report and recommended order to which the parties have an opportunity to file exceptions. The ICC's final determination of the case depends upon the extent of these exceptions. In the case of a contested

proceeding, the ICC usually does not give an order for at least two years after the application is filed.

Title 49, Chapter 1, Section 1(18)

"No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line or railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, or such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit (of) such abandonment. Nothing in this paragraph or in Section 5 of this title shall be considered to prohibit the making of contracts between carriers by railroad subject to this chapter, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching, or sidetracks."

Title 49, Chapter 1, Section 1(22):

"The authority of the Commission conferred by paragraphs (18) to (21) of this section, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

8.69.10.00 **Route Location and Design**

The Railroad Agent shall advise their supervisor of potential railroad problems in the route location and planning phases. The Agent may arrange for joint studies in the project development stage to obtain a route location and design that is economical and compatible with the railroad's operational needs and requirements.

8.69.11.00 **Railroad Advisory Team Concept**

A Railroad Advisory Team may be formed to assist the district in developing projects that require complex railroad involvement. The team may be comprised of representatives of the Agreements Branch, Legal Program, HQ R/W, and the district and can be convened upon the district's request.

8.69.12.00 **Project Certification - Railroads**

The Railroad Agent is responsible for railroad clearance for R/W certification for a project. The Railroad Agent certifies to the District Certification Section that all railroad property required for the project has been acquired by the state or is covered by a Right of Entry or a Resolution of Necessity, and that a railroad clearance memorandum has been received from Agreements Branch.

Clearance of matters concerning railroad operations rests with the Agreements Branch. It is responsible for preparing "Relations with Railroads" clauses for inclusion in the Contract Special Provisions, arranging for the state to execute the Construction and Maintenance Agreement or Service Contract, and obtaining PUC order or any other agreement required to clear the project.

When the above matters are cleared, Agreements Branch issues a railroad clearance memorandum to the Office of Office Engineer with a copy to the Railroad Agent. The Railroad Agent shall immediately notify District Project Control so the Status of Projects can be updated.

It is mandatory that the clearance information be entered in IRWS on the Railroad Project screen (I-2) and in PMCS on both the EVNT screen and the AGRE screen.

8.69.13.00 **Liaison Procedures with Railroad Companies**

The Railroad Agent shall establish and maintain channels of communication with railroad companies in the district. The Railroad Agent will arrange for the exchange of project study information so that future highway construction can be achieved in the most economical manner and with the least amount of disruption to the railroad. The required procedure is shown in the table below.

8.69.14.00 **Steps in a Railroad Involvement**

- Prior to route adoption, analyze route with respect to railroad involvement.
- Prepare notification of public hearings. Furnish adopted route maps to railroad.
- Send preliminary design plan to railroad (copy to Agreements Branch).
- Railroad approves bridge general plans.
- Railroad approves bridge contract plans and roadway contract plans.
- District Project Development prepares Certificate of Sufficiency of Right of Way requirements for bridge and roadway work.
- R/W appraisal prepared.
- Railroad approves legal descriptions for right of way requirements.
- Preparation of agreements, special provisions, and PUC Exhibits.

LIAISON PROCEDURES	
Phase	Explanation
Public Hearings	All railroads that are affected, or may be affected, shall be notified in writing of the time and place of public hearings to be held in connection with highway locations.
Route Maps	When a route is adopted by the CTC, a copy of the adopted route map shall be mailed to each affected railroad. Similarly, the railroad should be notified of any route that has been deleted from the highway system whenever it affects their railroad or railroad property.
Preliminary Design Plans	When preliminary plans are sufficiently advanced to determine what railroad facilities may be involved, the Railroad Agent shall forward them to the affected railroad with a request that the railroad comment or prepare preliminary relocation plans if required. Copies of the correspondence shall be sent to the Agreements Branch. Additional information, including any design revisions, should be sent to the railroad as it becomes available.
Coordination	A project that requires a major rearrangement or relocation of railroad facilities should be discussed early in the planning stages with representatives of the affected railroad, Agreements Branch, Legal, and HQ R/W. In this way the most practical and economical alternatives can be determined, consistent with sound highway and railroad design standards and practices.
Approved Plans	The Agreements Branch shall obtain railroads's approval of bridge plans.
Construction Date	The Agreements Branch shall notify each affected railroad in writing of the bid opening date for a specific highway project.

- Legal Program files PUC Exhibit.
- Right of Entry obtained, if necessary.
- Execution of agreement, deeds, and R/W Contract.
- Agreements Branch clears project for advertising.

8.69.15.02 **Nonoperating Property - Definition**

Nonoperating property is property that is not essential to railroad operating requirements or property that is vested in a railroad land company.

8.69.15.03 **Operating Property - Degree of Title**

8.69.15.00 **Property Classifications**

8.69.15.01 **Operating Property - Definition**

Since all railroads do not use the same criteria in classifying property and facilities as operating or nonoperating, the districts should exercise caution in making such judgments. Consultation with HQ R/W is advisable at the appraisal stage if items affected by the highway construction become questionable as to operating or nonoperating property.

In general, the term operating property is used to describe those railroad facilities and property that are essential to conduct the railroad transportation business and without which railroad service could not be provided to users. An example is the roadbed. Under some circumstances, however, certain railroad facilities such as warehouses, depots, and freight forwarding facilities may be classified as operating property.

Although easement title is the usual title the state acquires when railroad operating property is affected by a highway project, fee title may be obtained.

8.69.15.04 **Nonoperating Property - Degree of Title**

The same degree of title should be obtained as is acquired for the balance of the project. In most cases, acquisition of fee title is advisable.

8.69.16.00 **Acquisition Procedures**

8.69.16.01 **R/W Maps and Legal Descriptions**

To expedite acquisition of both operating and nonoperating railroad property, R/W has agreed to furnish appraisal maps to the railroad as soon as possible after environmental clearance. To implement this, R/W Engineering shall furnish the necessary number of appraisal maps (and legal descriptions if available) to the Railroad Agent at the

same time it sends the appraisal maps to the Appraisal Branch. On maps furnished to the Railroad Agent, only the railroad parcel(s) should be colored.

The Railroad Agent shall forward the maps (and legal descriptions if available) to the railroad so the district and the railroad can begin their appraisals at about the same time. The legal descriptions must go to the railroad as soon as possible for its review and comment. The Railroad Agent's letter of transmittal to the railroad should provide an estimated completion date for the staff appraisal.

8.69.16.02 **Contract and Offer**

A R/W Contract and offer must be sent to the affected railroad immediately after the appraisal is approved. The submission shall contain the deed or indenture and appraisal summary statement (Exhibit 8-EX-15) with specific comparables that were used. Ideally the property transaction should be agreed to between the parties before the Construction and Maintenance Agreement or Service Contract is submitted to the railroad.

8.69.16.03 **Mile Post**

Highway projects should be identified with the railroad line designation and mile post, if available, or railroad station when corresponding with the railroad on new projects. After the railroad establishes a file number, that number shall be used on all future correspondence. If the proposed work is at an existing grade crossing, the PUC grade crossing number shall be used on the correspondence.

8.69.16.04 **Railroad Contacts**

HQ R/W will periodically publish a list of railroad contacts for the Railroad Agent's reference. Each Agent is responsible for notifying HQ R/W as changes occur to the railroads operating within their district.

8.69.16.05 **Title Reports for Exchanges**

In transactions involving exchanges of properties with a railroad, a copy of the preliminary title report or policy of final title covering the property to be conveyed to railroad shall be furnished to the railroad if it is available.

8.69.17.00 **Railroad Payments**

8.69.17.01 **Minimum Payment of \$1,000**

In transactions with railroads where the state is to receive a Grant or Quitclaim Deed or an easement in the format outlined on Exhibits 8-EX-74, 8-EX-76, and 8-EX-79, it is permissible to make a minimum payment of \$1,000. This minimum payment is applicable only when the appraised value of the property to be acquired is less than \$1,000.

8.69.17.02 **Right of Entry - Interest Payment**

Although no interest may be paid on a Right of Entry obtained for temporary easement, payment of interest is permissible where the state ultimately is to obtain a permanent right from the railroad (see section 8.69.24.01 for distinction). In this case interest is paid from the date of execution by the state until 90 days after submission of a mutually satisfactory R/W Contract to the railroad.

8.69.17.03 **Railroad's Lessees**

The railroads generally will not clear lessees' interests but will insist that the state reach separate agreements with lessees before settlement with the state.

To ensure that payment is not made to a lessee for improvements for which the railroad claims ownership, the following procedure should be followed:

- Discuss the lessee's ownership of improvements, if any, located within the area to be acquired.
- Confirm ownership of the improvements with the railroad in writing.
- Once the railroad's concurrence has been obtained, commence negotiations with the lessee to acquire the affected improvements.

8.69.17.04 **Purchase of Track**

The purchase of existing railroad track is prohibited. Any deviation from this procedure must have HQ R/W's prior approval.

8.69.17.05 **Transverse Crossings**

Payment of consideration and processing fees will not be made for transverse crossing easements on railroad operating property, except as provided in Appraisal Section 7.13.60.01-A.1.d.

8.69.18.00 **R/W Contract Clauses with
Railroads**

The clauses in the table entitled "Railroad R/W Contract Clauses" are used in transactions with the railroad companies. The Department has carefully considered the phraseology of the clauses and they shall not be altered. If, in the district's opinion, situations arise that require modification of these clauses or use of special clauses, the district must submit the contract to HQ R/W for prior approval.

8.69.19.00 **Deed Clauses With Railroads**

The deed clauses listed in the table entitled "Railroad Deed Clauses" have been standardized for use with the railroads. Prior HQ R/W approval is required if it is necessary to revise any of these standard deed clauses. The reason for the revision should be set forth in the MOS with a copy of the deed attached.

RAILROAD R/W CONTRACT CLAUSES			
Type	Railroad	Explanation	Clause
Mortgage Release-Reconveyance	All railroads EXCEPT Southern Pacific	The railroad shall furnish a reconveyance or release of mortgage prior to close of escrow	
	Southern Pacific	When acquiring fee title to property that is encumbered by a mortgage or deed of trust, the R/W Contract shall contain a clause obligating the railroad to furnish the state with a reconveyance or release of mortgage within 90 days from the date of the purchase transaction.	Southern Pacific Transportation Company, at no expense to the State, expressly covenants to cause any or all mortgages or Deeds of Trust, including modifications, amendments and supplements thereto, which affect the property to be conveyed in this transaction to be released or reconveyed and recorded within 90 days from the date of delivery to the State of the Grant Deed or Quitclaim Deed.
Subordinations	All railroads	If easement rights only are being acquired and if consideration paid for the easement is \$2,500 or more, the R/W Contract should contain the following clause obligating the railroad to furnish a subordination thereof to the State.	In consideration of the State's waiving a Release of Mortgage, the undersigned Grantor covenants and agrees to have any Mortgage, Indenture, or Deeds of Trust subordinated to the rights being acquired in this transaction and provide evidence of said subordination within one year from the date of close of escrow.
Indemnification Clause	All railroads	The following clause is used in easement acquisitions where the amount of settlement is less than \$2,500. This clause is not used when a transverse crossing easement is being acquired without monetary consideration. For consideration over \$2,500, see "Subordinations" above.	In consideration of the State waiving a release of mortgage, the undersigned grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The grantor's obligation herein to indemnify the State shall not exceed the amount paid to the grantor under this contract.
Modification of Clause 1, R/W Contract Form	All railroads	In all transactions, it is permissible to delete the following portion of Clause 1 of	

RAILROAD R/W CONTRACT CLAUSES			
Type	Railroad	Explanation	Clause
RW 8-3		the standard R/W Contract: "...or on account of the location, grade, or construction of the proposed public improvement."	
Real Property Tax Clause	The Atchison, Topeka, and Santa Fe Railroad Company	The following clause is used in all transactions.	The Atchison, Topeka, and Santa Fe Railway Company agrees that it has paid or will pay all current taxes and it will make its own arrangements as it sees fit regarding adjustment or cancellation of taxes on property which is the subject of conveyance to the State of California in this transaction.
Grant Deed in Lieu of Condemnation	The Atchison, Topeka, and Santa Fe Railway Company	The following clause is to be used where the State is accepting a Grant Deed.	It is agreed and understood that the State's acquisition of the property described in the Grant Deed is for the improvement of a State Transportation facility, and Santa Fe is executing a Contract and Grant Deed under threat of condemnation for State Transportation purposes.

RAILROAD DEED CLAUSES			
Type	Railroad	Explanation	Clause
Grade Separation Access Rights Clause (See Section 6.06.05.00-.01)	Southern Pacific Transportation Company	Use the following Deed clause in acquiring railroad property rights for grade separation projects.	This conveyance is made for the purpose of a highway grade separation and the Railroad hereby releases and relinquishes to the State any and all abutters rights of access in and to the traveled way within the limits of the property herinabove-described.
DM-4 Modification	Southern Pacific Transportation Company	Use the following clause where the State accepts a Grant Deed or Quitclaim Deed and the mineral or oil rights are excepted by the owner or some other party having an interest in these rights.	Excepting and reserving, however, unto the Grantor, its successors and assigns, forever, the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said land or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas, and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right of ingress and egress beneath the surface of said land to explore for, extract, mine and remove the same, and to make such use of the said land beneath the surface as is necessary or useful in connection therewith, which use may include lateral or slant drilling, boring, digging or sinking of wells, shafts, or tunnels; provided, however, that Grantor, its successors, or assigns, shall not drill, dig, or mine through the surface of said land in the exercise of said rights, and shall not disturb the surface of said land or otherwise develop the same in such manner as to endanger the safety of any highway that may be constructed on said land; provided, also, that no lapse of time in the exercise of such reserved rights shall be deemed to be an abandonment thereof nor a vestiture of any adverse right in the Grantee or its assigns.
DM-1 Modification	The Atchison, Topeka, and Santa Fe Railway Company	<p>Delete the following portion of the DM-1 Clause from Form RW 6-1 (C), Grant Deed (Corporation with DM-1 Clause).</p> <p>"...and the Grantor for itself, its successor and assigns hereby waives any claims for any and all damages to Grantor's remaining property contiguous to the property hereby conveyed by reason of the location,</p>	

RAILROAD DEED CLAUSES			
Type	Railroad	Explanation	Clause
		<p>construction, landscaping or maintenance of said highway."</p> <p>In lieu of deleting the aforementioned portion of the DM-1 Clause, the district may use Form RW 6-1(D), Grant Deed (Corporation without DM-1 Clause).</p>	
Modified DM-4 Clause	The Atchison, Topeka, and Santa Fe Railway Company	Include the following clause where the State accepts a Grant Deed or Quitclaim Deed and the railroad reserves the oil, gas, and mineral rights.	Santa Fe expressly reserves and excepts all minerals contained in the above-described land, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, provided that Santa Fe shall not have the right to go upon or use the surface of said land or the upper 100 feet of the subsurface, or any part thereof, for the purpose of drilling for, mining, or otherwise removing, any of said minerals. Santa Fe may, however, and hereby reserves the right to remove any of said minerals from said land by means of wells, shafts, tunnels, or other means of access to said minerals which may be constructed, drilled, or dug from other land, provided that the exercise of such rights by Santa Fe shall in no way interfere with or impair the use of the surface of the land hereby conveyed or of any improvements thereon.
Easement Reversion and Structure Removal Provisions for Separated Grade Crossings	Union Pacific Railroad Company	Provision for removal of improvements constructed by the State in the event highway use ceases.	If the land described in Exhibit "A" or any portion thereof, shall cease to be for highway purposes, then and in that event, the right hereby given shall as to such portion or portions, as the case may be, thereupon cease and terminate and GRANTOR, its successors and assigns, shall resume possession thereof the same as though this instrument had not been executed and any structure placed on the land described in Exhibit "A" by the GRANTEE will be removed by and at the expense of the GRANTEE, subject to appropriation of funds by the California Transportation Commission.

8.69.20.00 **Railroad Indentures (Easement)**

8.69.20.01 **Standards of Acceptability**

When acquiring easements, the district should examine the deeds or documents by which the railroad obtained title, if practical, to determine the railroad's present and future rights of usage, such as the right to construct, reconstruct, or use other facilities on their right of way.

Easements from the railroads differ from easements received from other property owners. In some instances, the railroads may insert clauses that define the obligations and responsibilities of the two parties to the transaction.

Upon receipt of an easement, the district shall review it for conformance with the provisions of this section.

Extreme care must be exercised to ensure that an easement does not cover an area used by the public but for which no recorded document exists (see Section 8.69.19.02).

Easements should contain a provision that requires the railroad to obtain an encroachment permit for record purposes only when it plans to work within the area described in the easement.

HQ R/W should be contacted concerning any particular problem that may arise. When an easement requires review by the Department, the district will transmit the easement to HQ R/W with its recommendations or comments.

While it is not possible to list every type of obligation that would be unacceptable in an easement, those listed in the following table are some of the objectionable clauses the railroad may ask to include in an easement.

OBJECTIONABLE CLAUSES

- Generally, easements should not call for any continuing state obligations.
- There should be no obligations to alter, reconstruct or remove a facility at the request of the railroad, its lessees, subleases or licensees except as provided for in the standard indentures.
- There should be no obligation for the payment of funds for railroad work in the easement indenture. The indenture may make reference to the Construction and Maintenance Agreement or Service Contract which will cover work performed by the railroad
- The state's construction should not be subject to approval by the railroad. Clauses may be inserted, however, that provide that the railroad may inspect the work and that they have the right to approve plans and specifications covering the work to be performed near the railroad tracks.
- There should be no provision allowing the railroad to supervise, direct, or change any of the methods or procedures of construction.
- There should be no provision allowing the railroad to do work if, in the railroad's opinion, the state does not perform the work satisfactorily.
- Easements should not contain a provision for a reversion of state's title based on non-use of the highway or highway facilities. The railroads will sometimes insert a clause that provides that title shall revert if the facility ceases to be a highway. The only way a facility can cease to be a highway is by the CTC's action. Such terminology is acceptable when the state has an easement, since subsequent abandonment of the highway by the CTC would cause a reversion to the owner of the underlying fee. However, terminology in connection with a reversion, such as "ceases to be used as a highway," is unacceptable since it calls for a reversion based on non-use.
- Title should not be taken subject to subsequent leases, licenses, encumbrances, etc. Easements, however, usually provide that the state is to take title subject to prior leases, licenses, encumbrances, etc.

8.69.20.02 **Easements for Highway
Widening**

When an existing highway right of way was acquired through prescription, easements for the widening of the highway right of way (grade crossing) should not describe the existing right of way. If the state accepts an easement that describes the existing prescriptive right of way plus the widened portion, this might be interpreted as an abandonment of the original highway. In that case the conditions and covenants contained in the document would apply to both the existing highway and the widened portion. Since the state's title by prescription may be less restrictive than the new rights obtained, this might mean the state may be divesting itself of rights previously acquired by prescription.

On a widening of an existing highway, the state may accept a description covering both the existing and the widened portion if the state's original rights were acquired by recorded document. The effect of accepting a document covering both portions will not vitiate the state's original rights since these rights are of record and may be disposed of only through the CTC's action.

8.69.20.03 **Drainage Easements**

Where the state is obligated to relocate an existing drainage facility under the railroad tracks, the railroad is responsible for owning and maintaining the facility if the construction is nothing more than a substitute facility and there is no additional water being introduced or no appreciable change in water velocity. No easement is required in this case, and the proposed construction may be covered by a Right of Entry or in the Construction and Maintenance Agreement or Service Contract.

In certain cases the railroad may be obligated to replace the existing drainage facility at its own expense. To avoid delays, the district should contact HQ R/W as soon as the right of way requirements are determined so a legal determination can be obtained.

8.69.20.04 **Easements in Limited Vertical
Dimension (Aerial Easements)**

See Section 8.01.29.00 for restrictive conditions that must be included in Aerial Easements. HQ R/W must be consulted about the wording to be used, and FHWA concurrence is required.

8.69.20.05 **Standard Indentures - Southern
Pacific Transportation Company**

The eleven standard indentures in the table on the following page shall be used verbatim. Any changes require HQ R/W's prior approval.

8.69.20.06 **Transverse Easements - Atchison,
Topeka and Santa Fe Railroad
Company**

Two standard indentures for transverse crossings have been developed with AT&SF: Exhibit 8-EX-80 for a grade separation and Exhibit 8-EX-81 for a drainage crossing. These forms are to be used only for the specific purposes described and are not used for longitudinal encroachments for slopes, retaining walls, footings, drainage, or other longitudinal requirements. These forms are to be used verbatim, except for the description of the proposed construction (Clause (a) of the Transverse Drainage Indenture 8-EX-81). Any other modification must have HQ R/W's prior approval.

8.69.20.07 **License for Minor Installations on
Atchison, Topeka and Santa Fe
Right of Way**

Exhibit 8-EX-83 shall be used whenever it is necessary to install minor improvements on Santa Fe right of way for the State's benefit. The only modification is in Section 1, a description of the improvement, and Section 11, which refers to the licensee's address. The district now prepares the document with the railroad supplying the prints(s). If the facility is such that it must remain in place, a permanent right must be obtained. If in doubt, check with Office of Structures or HQ R/W.

STANDARD INDENTURES - SOUTHERN PACIFIC		
Title	Exhibit	Explanation
Electrical Conduit	8-EX-69	Covers installation of electrical conduit on railroad property.
Existing Drainage Facilities Covered by Rights of Entry	8-EX-70	Covers all existing drainage facilities that have been previously constructed under Rights of Entry. This is a grandfather-type document to the extent that the state is willing to accept maintenance of the drainage facility in perpetuity.
Modification of Existing Drainage Facility	8-EX-71	Covers a transverse drainage facility where the state has collected drainage and has centralized the drainage through one culvert, which makes it necessary to construct a new culvert under the railroad tracks to accommodate the water that formerly passed through two or more structures. No new water is introduced but the flow is channeled to a new location. In this case the state will extend the structure and provide maintenance if required by railroad for a 10-year period.
New Drainage Facility	8-EX-72	Covers a transverse drainage facility when the state introduces new water onto railroad property creating the need for a drainage facility under the tracks. In this case we have agreed that the state will maintain the facility in perpetuity. If the drainage facility has to be extended due to railroad requirements, the state's obligation to extend the drainage facility at state expense is for a period of 20 years after completion of initial construction. At the end of the 20-year period, the cost of any extension required is borne by the railroad.
Longitudinal Slope Easement with Retention of Rights	8-EX-73	Covers a longitudinal slope easement in which the railroad retains rights to install additional facilities within the easement area, not incompatible with the rights granted to the state. Although the railroad receives compensation for this easement, the state's appraisal is reduced by the value of the railroad's reservation of rights allowing the installation of additional facilities within the easement area. (See Section 8.01.26.00).
Longitudinal Slope Easement Without Retention of Rights	8-EX-74	Covers a longitudinal slope easement without any retention of rights by the railroad. In this case the valuation of the easement is not diminished as indicated above. Note that the difference between this easement and that mentioned above is the deletion of Sections 3 and 6 from Exhibit 8-EX-73. (See Section 8.69.16.02.)
Longitudinal Drainage Easement with Retention of Rights	8-EX-75	Covers a longitudinal drainage easement wherein railroad retains rights to install additional facilities within the easement area not incompatible with the rights granted to state. The valuation of this parcel should be similar to the above; that is, the valuation should be reduced based on the reservation of railroad rights. (See Section 8.01.26.00.)
Longitudinal Drainage Easement Without Retention of Rights	8-EX-76	Covers a longitudinal drainage easement without any reservation of rights by the railroad. The appraisal of this parcel should be in conformance with that for Exhibit 8-EX-74 above. Note the only difference between this exhibit and Exhibit 8-EX-75 is the deletion of Sections 3 and 7. (See Section 8.69.16.02.)
Transverse Crossing at Separated Grade	8-EX-77	Covers a transverse crossing at separated grades. Note the blank space on Page 1, Section 1, Line 2. The district inserts the proper terminology in this space, e.g., overhead, underpass.
Crossing at Grade	8-EX-78	Covers an at-grade crossing. The legal descriptions shall be prepared pursuant to Section 8.69.19.05.
Straight Highway Easement	8-EX-79	

**8.69.21.00 Processing Railroad Indentures
(Easements)**

Standard and nonstandard easements are processed as shown in the following table.

**8.69.21.01 Acquisition of Standard
Transverse Crossing Easements
from Atchison, Topeka and Santa
Fe Railway Company**

Five counterparts of the appropriate easement are to be submitted to the railroad, along with an appropriate number of R/W maps for review, approval, and execution. Insert a complete description of work to be performed on the drainage indenture. (8-EX-81)

Process as shown in the table below.

**8.69.21.02 The Atchison, Topeka and Santa
Fe Railway Company Drilling
Permits**

The district prepares a Letter of Request and Drilling License (8-EX-82) whenever the state proposes to do exploratory drilling with state forces on Santa Fe's operating right of way. When work is contracted out, a license is not used, instead a Right of Entry is obtained.

The Letter of Request will state the following:

- Approximate number and size of holes to be drilled.
- Anticipated length of time the property will be occupied.
- Grading requirements, if any.
- Any other significant factors relevant to state's proposed work.

The district submits duplicate counterparts of the license to Santa Fe with a print showing the location of the site tied into railroad stationing and indicating a minimum clearance of 15 feet (4.572m) measured at right angles to the centerline of the nearest track. The district should complete all information required on the form except the execution date. The area of land to be used should be shaded and not outlined or colored.

Upon receipt, the district will accept the executed counterparts on the state's behalf and return the duplicate counterpart to the railroad. The district shall retain the original drilling permit and send a copy to the Agreements Branch for filing and a copy to the requesting branch.

STANDARD TRANSVERSE CROSSING EASEMENT - SANTA FE RAILWAY	
Type	Process
Standard Indentures (Easements)	<p>The district prepares duplicate counterparts plus a file copy and sends to the railroad for execution with an additional copy for their internal use.</p> <p>After execution by the railroad, the District Director or designee executes on the State's behalf and the indenture is recorded.</p> <p>The railroad's copy is then returned with the recording information and a copy of the document is sent to the Agreements Branch for filing. The district shall retain the original.</p>
Nonstandard Indentures (Easements)	<p>The district prepares duplicate counterparts and sends to HQ R/W.</p> <p>HQ R/W submits easement to the Agreements Branch for review and comment and to the Legal Program for approval.</p> <p>After approval, HQ R/W returns easement to district for standard processing.</p>

After the drilling is completed, the district shall notify Santa Fe of the completion date and request termination of the license.

When the test findings are available, a copy of the findings shall be forwarded to Santa Fe for their information. All conditions of the license must be strictly adhered to during the performance of any work on Santa Fe's property by state forces.

8.69.22.00 **Acquisition of Railroad Access Rights**

Procedures are outlined in the table on the following page.

Standard access clauses should be used when acquiring access rights from the railroads but should be modified to specifically define courses and distances over which access is to be acquired. (See Section 8.69.18.00 et seq for grade separation access rights.) The district should refer all railroad access control acquisitions to HQ R/W before completing the appraisal process and during negotiations should disagreements with the railroad occur.

8.69.23.00 **Replacement of Railroad Buildings**

8.69.23.01 **Determination of Use - Replacement**

In all acquisitions of improved railroad property covered by R/W Contract, the district must determine whether the affected building is operating or nonoperating. This is most important when it involves buildings such as depots, warehouses, or other railroad buildings, since the structure may have to remain in place and in service until a new facility is constructed. Only then can the old building be removed to accommodate highway construction.

If the district's preliminary investigation indicates that an affected building is operating property, the district prepares a comprehensive report substantiating its determination and submits to HQ R/W with a copy to the Agreements Branch. The report is sent to FHWA for approval to ensure that replacement of the structure will be eligible for federal reimbursement. To comply with Section 106 or 4(f) requirements, the report must indicate if there are any historic stations, tracks, or railroad sites that are being used for recreational purposes.

On all non-federally participating projects, operating improvements located on operating property will be relocated or be functionally replaced. Nonoperating property shall be acquired at fair market value.

If operating improvements are to be replaced, appropriate environmental clearance must be obtained.

8.69.23.02 **Buildings - Betterment and Credits**

When an existing railroad building is to be replaced, the replacement facility must be constructed to meet building code requirements. In constructing a replacement facility, only items that exceed the code requirements are considered betterments. The plans for the structure must be approved by the railroad and, as a general rule, only those items specifically requested by the railroad in excess of the code requirement and/or additional capacity are considered betterments. The credits to be applied against the construction of the new facility will be an amount equal to the railroad records of depreciated book value of the existing facility. See 23 CFR 646, as amended, for detailed instructions.

On federally participating projects, HQ R/W's procedure is that FHWA concur that the improvement to be replaced is an operating railroad facility. On all projects eligible for federal funds, the contract plans for the improvement, including credits, shall have prior FHWA approval.

PROCEDURE FOR ACQUISITION OF ACCESS RIGHTS		
Case No.	Factual Condition	Explanation
Case #1	Freeway to be constructed on new alignment; no public roadway previously existed; immediately adjacent to railroad operating or industrial property; no railroad property to be acquired.	The railroad has no legal right of access to the new facility and access rights need not be acquired from the railroad.
Case #2	Same factual condition as in Case #1, except that railroad property is to be acquired.	Access rights shall be acquired from the railroad using the applicable access clause in the conveyance documents. No payment should be made for the access rights.
Case #3	Freeway to be constructed along an existing public roadway immediately adjacent to railroad operating property; no prior document or agreement between the State and railroad exists which establishes the railroad's right of access to the existing public roadway; no railroad property to be acquired.	Access rights need not be acquired.
Case #4	Same factual condition but with a prior document or agreement.	<p>If a prior document or agreement does exist between the State and railroad that establishes the railroad's rights of ingress and egress to the existing public roadway, the district should request a legal opinion through HQ R/W to determine if loss of this right is compensable. The request should include the following:</p> <ul style="list-style-type: none"> •R/W map. •Plan showing proposed construction. •Copy of prior document or agreement. •Evidence of railroad's use of public roadway for ingress and egress. •Any additional pertinent information.
Case #5	Same factual condition as in Case #3 except that a new freeway is to be constructed immediately adjacent to railroad station ground, industrial, or nonoperating property.	Access rights should be acquired using the applicable access clause. Appraisal consideration should be given to payment of damages or other mitigating measures for the loss of access rights.
Case #6	Same factual conditions as in Case #3 except that a portion of railroad operating property is to be acquired.	Access rights should be acquired utilizing the applicable access clause in the conveyance documents. No consideration for access rights should be made.

8.69.24.00 Railroad Rights of Entry

8.69.24.01 Types

Railroads grant the following three types of Rights of Entry:

- **Rights of Entry Covering Permanent Right of Way Requirements** - These rights shall be covered by a formal document as soon as practical. Since issuing a Right of Entry involves considerable time and expense to the railroad, a Right of Entry covering permanent right of way requirements should be requested only when it becomes necessary to meet advertising schedules, if it is apparent that waiting for an agreement or deed will delay the State's project. Every effort should be made to complete an acquisition before requesting a Right of Entry.
- **Rights of Entry Obtained for Temporary Easement** - The railroad will not grant a recordable document for a temporary right of way requirement, such as a temporary slope easement or temporary drainage easement. The district's request to the Railroad shall clearly set forth the reason for and use of the temporary easement.
- **Rights of Entry for Hazardous Waste Testing** - This basically is the same as the request for a temporary easement with specific detail on the reason for testing and any special conditions and circumstances.

Whether the document covers a temporary or a permanent right, the railroad refers to each type as a Right of Entry.

8.69.24.02 Standards of Acceptability

Rights of Entry from the railroad are prepared by the railroad. The request to the railroad should specify that the signature page is to provide for acceptance by the DDC-R/W (see Exhibit 8-EX-24). Since they deviate from our standard form of Right of Entry, they must be submitted to HQ R/W for review and approval. Care should be taken that Rights of Entry from railroads incorporate the following two features:

- **Limited Liability by the State** - Liability should be limited in accordance with Government Code Section 14662.5, which provides that the State may agree to indemnify other parties for any damages proximately caused by reason of State's operations under the agreement, or by the use of language stating that the state will indemnify the railroad insofar as it may legally do so.

A typical clause approved by the Legal Program reads as follows:

"Pursuant to the provisions of Section 14662.5 of the Government Code of the State of California, the State of California agrees to indemnify and hold harmless Railroad and agrees to repair or pay for any damage proximately caused by reason of the permission given hereunder."

- **Limitation of Expenditures** - Limitation can be accomplished by putting a dollar limitation in the Right of Entry or by reference to a Construction and Maintenance Agreement or a Service Contract. If a dollar amount is included in the Right of Entry, the maximum should not exceed \$500.

8.69.24.03 Processing

After review and recommendation for acceptance, the district shall execute the Right of Entry. If a dollar amount is included for possible work by railroad, it shall be encumbered prior to submittal. The Railroad Agent should notify Project Development to add this amount to State's estimate under "State Furnished Materials."

8.69.25.00 Summary of Railroad Transactions

A MOS must be prepared for all railroad property transactions that are completed by deed, indenture, or Right of Entry for temporary right of way requirements when no other right of way document will be obtained from the railroad.

When a Right of Entry has been obtained for permanent rights that will be covered later by a deed or indenture, the MOS shall not be prepared until the permanent document has been obtained.

The MOS shall include conformed copies of all conveyances covered by the transaction. When permanent rights have been acquired, a conformed copy of the conveyance document(s) shall be sent to the Agreements Branch for filing. The district shall retain the originals.

The two types of MOS and their uses are described below.

8.69.25.01 **Standard Memorandum of Settlement**

All railroad property transactions where payment is made for acquired right of way, whether permanent

or temporary, must be prepared with the standard MOS conforming to the requirements of Section 8.50.00.00.

8.69.25.02 **Short Form Railroad Memorandum of Settlement**

The short form Railroad MOS (Form RW 8-30) is used only when the appraised value of the transaction is zero and the right of way acquisition has been completed at no cost to the state.

NOTES: